

CHAPTER 46:10:07

FAMILY SUPPORT WAIVER SERVICES

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46:10:07:01 Definitions. Terms used in this chapter mean:

(1) “Certification,” the legal authorization from the division pursuant to chapter 46:11:02;

(2) “Consent,” voluntary approval given in writing, orally, or implied by the action of a person with adequate information and sufficient understanding to comprehend the consequences of the decision;

(3) “Division,” the Division of Developmental Disabilities;

(4) “Department,” the Department of Human Services;

(5) “Employee,” any worker in an agency with choice payment arrangement who is co-employed by the OHCDs or independent contractor and the participant;

(6) “Employer of record,” any OHCDs or independent contractor providing family support services pursuant to this chapter and who is responsible for officially hiring the employee, processing employment forms, providing training to program participants and employees if requested, and managing the payroll function;

(7) “Family,” a person or a group of people who are related to the participant by blood, marriage or adoption, or define themselves as a family based upon bonds of affection, and who currently share a household with the participant or has, in the past, shared a household with the participant. For the purposes of this definition, “bonds of affection” means enduring ties that do not depend on the existence of an economic relationship and the relationship is expected to endure over time;

(8) “Family support coordinator” or “coordinator,” an individual employed by an OHCDs or independent contractor to assist participants who receive family support services in gaining access to needed family support and other available services, as well

as needed medical, social, educational and other services, regardless of the funding source for the services to which access is gained;

(9) “Goals,” outcomes generally expected to be achieved by a participant for each service received, stated in measurable terms so that their attainment can be determined, and should be attained within five years. Goals are developed from an evaluation of the participant's present performance, abilities and desires;

(10) “Guardian,” with respect to a participant under the age of 18 years, a biological or adoptive parent, or an individual, organization or agency with court-appointed guardianship; and with respect to a participant 18 years of age and older, an individual, organization or agency, with court-appointed guardianship;

(11) "Home and community-based services" or "HCBS," the services contained in this chapter that are provided by an OHCDS or independent contractor to a participant who, without these services, would require placement in an intermediate care facility for the mentally retarded;

(12) “Individualized service plan” or “ISP,” a single plan for the provision of services and supports to the participant that is directed by the participant, is outcome oriented and intended to specify all needed assessments, supports and training pursuant to §46:10:07:20;

(13) “ISP team,” a team composed of the coordinator, the participant, the participant's parent if the participant is under 18 or the participant’s court appointed guardian, and anyone else the participant desires;

(14) “Managing employer,” any participant receiving services pursuant to this chapter and who is responsible for recruitment, making hiring recommendations,

determining dismissals, training of employees, determining of what tasks to be preformed, and submitting and approving employees timecards;

(15) “Minor,” a person under the age of 18;

(16) “Organized Health Care Delivery System” or “OHCDS,” an entity certified by the division under the provisions of chapter 46:11:02 and meeting the requirements of this chapter to provide family support services;

(17) “Participant,” a person receiving services or supports under the provisions of this chapter;

(18) “Participant directed services,” a service arrangement whereby the participant may choose any individual they desire to assist with the design of services, the selection of service providers and decisions of how the authorized funding is to be spent based on those needs in the participant’s ISP;

(19) “Services,” a system of formalized supports, generic or specialized;

(20) “Sub-contract,” an agreement between an OHCDS and an individual or organization for the provision of services to a participant;

(21) “Sub-contractor,” one that enters into an agreement with an OHCDS and an individual or organization for the provision of services to a participant;

(22) “Supports,” are paid or non paid services that are used to enable an individual to access resources and information available to the individual in their community.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26.

46:10:07:02. Scope and authority. This chapter sets forth the regulations of the division regarding family support services funded by the state's Home and Community Based Family Support waiver and applies to the operation of the division and to the operation and provision of services and supports by a certified OHCDS or independent contractor. The authority of the division is derived primarily from the provisions of SDCL 27B-1-15 and the authority to adopt rules pursuant to SDCL 27B-2-26.

Source:

General Authority: SDCL 27B-1-15, 27B-2-26.

Law Implemented: SDCL 27B-2-26.

46:10:07:03. Criteria for designation as an OHCDS. An OHCDS providing services under the provisions of this chapter must meet the following criteria:

- (1) It must be certified as an adjustment training center under the provisions of chapter 46:11:02;
- (2) It must have a signed provider agreement with the division;
- (3) It must have a signed provider agreement with the Department of Social Services; and
- (4) It must provide at least one medical service covered under the provisions of article 67:16.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

46:10:07:04. Responsibilities of an OHCDs. The responsibilities of an OHCDs must include the following:

(1) It must have primary responsibility for preparing the participant's annual ISP and modifications as needed;

(2) It must ensure the health and safety of each participant receiving services according to this chapter and demonstrate compliance with a personal outcomes review to assess personal outcomes in the areas of choice, relationships, lifestyle, health and well-being, rights, and satisfaction;

(3) It must ensure that services provided are consistent with the participant's ISP and the provider agreement with the division;

(4) It must serve as an employer of record and a co-employer when an agency with choice model pursuant to §46:10:07:14 is used;

(5) It must monitor and document the effectiveness of the implementation of the ISP on a quarterly basis;

(6) It must provide participants and their families with a written list of their rights in an accessible format or language that is easy to understand;

(7) It must submit reports and comply with all record keeping required by the division;

(8) It must submit claims to the Department of Social Services for reimbursement;

(9) It must submit incident reports pursuant to §46:10:07:12;

(10) It must ensure that any employee or subcontractor adhere to the division's qualifications for providing services pursuant to this chapter;

(11) It must maintain, transfer and retain records pursuant to this chapter including all information related to invoicing; and

(12) It must have policies approved by the division in the following areas and ensure that any employee or subcontractor is provided adequate training on each policy:

(a) Confidentiality;

(b) Drug-free workplace and drug screening;

(c) Grievance;

(d) Sexual harassment;

(e) Abuse, neglect, or exploitation reporting;

(f) Safety;

(g) Universal precautions;

(h) Proper lifting techniques and body mechanics, back safety and risk factors for back injury; and

(i) Appeal process.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

46:10:07:05. Subcontracting. An OHCDs may provide family support waiver services directly or subcontract with another provider or another OHCDs. When subcontracting, the OHCDs shall ensure that any provider of services meets all provider qualifications set forth in this chapter. Any subcontract shall include:

- (a) The scope, frequency, duration and cost of the services to be provided;
- (b) The qualifications of the provider;
- (c) The ISP goals that will be addressed by the subcontractor;
- (d) The signature of the participant, or the participant's parent or guardian, the service provider and the OHCDs; and
- (e) The reason for service termination.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

46:10:07:06 Criteria for designation as an independent contractor providing service coordination. The independent contractor providing service coordination under the provisions of this chapter must meet the following criteria:

- (1) Have a signed provider agreement with the division;
- (2) Have a signed provider agreement with the Department of Social Services;

(3) Be incorporated as a nonprofit entity incorporated according to SDCL chapters 47-22 to 47-28, inclusive, and meet the definition for tax exemption status according to § 501(c)(3) of Title 26 of the Internal Revenue Code, October 22, 1986, as in effect on December 20, 1995 and file articles of incorporation and nonprofit status with the Secretary of State and have bylaws approved by its board of directors; and

(4) Meet the qualifications outlined in §46:10:07:07; and

(5) Have policies approved by the division in the following areas:

- (a) Abuse, neglect, exploitation and incident reporting;
- (b) Termination of services and notice requirements;
- (c) Grievance and appeal process;
- (d) Rights restrictions, restrictive procedures and due process;
- (e) Drug-free workplace;
- (f) Sexual harassment;
- (g) Safety;
- (h) Emergency procedures and back up plan;
- (i) Universal precautions;
- (j) Proper lifting techniques and body mechanics, back safety, and risk factors for back injury;
- (k) Generally accepted accounting practices (GAAP);
- (l) Insurance;
- (m) Management of the participant's personal finances;
- (n) Administrative office hours and on-call staffing;
- (o) Confidentiality of information, retention and protection of records;

- (p) Service team assessments;
- (q) Service coordinator responsibilities and training; and
- (r) Individual service plan and back up plan.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

46:10:07:07. Qualifications of an independent contractor providing service coordination. Any independent contractor providing service coordination shall:

- (1) Be at least 21 years of age;
- (2) Pass a criminal background check;
- (3) Be able to communicate effectively verbally and in writing;
- (4) Be able to follow written or verbal instructions provided by the participant, guardian, advocate, or family member of the participant;
- (5) Have the abilities or skills necessary to meet the participant's needs as outlined in the ISP;
- (6) Have a degree in the field of human services, social work, sociology, psychology, or related field experience or be a parent of a child with a developmental disability;
- (7) Be able to effectively utilize database and word processing computer software and the Internet;

(8) Successfully complete a minimum of 40 hours of training provided by the division in the following areas:

- (a) Administration of the HCBS family support waiver;
- (b) Individual service plan development;
- (c) Available services;
- (d) Defining, identifying and reporting abuse, neglect, and exploitation;
- (e) Individual education program pursuant to chapter 24:05:27;
- (f) Developmental disability eligibility criteria; and
- (g) Inventory for client and agency planning training provided by the

division; and

(9) Have the ability to work independently after training is completed.

An independent contractor providing service coordination who is a parent of a child with a developmental disability will not provide service coordination to his or her own child.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

46:10:07:08. Responsibilities of an independent contractor providing service coordination. The responsibilities include:

- (1) Compliance with state and federal worker's compensation requirements;

- (2) Compliance with division qualifications set forth in this chapter for providing services;
- (3) Submission of reports and compliance with all record keeping required by the division;
- (4) Submission of claims to the Department of Social Services for reimbursement;
- (5) Maintenance, transfer and retention of records pursuant to this chapter including all information related to invoicing;
- (6) Assurance of the health and safety of each participant receiving services according to this chapter and compliance with a personal outcomes review to assess personal outcomes in the areas of choice, relationships, lifestyle, health and well-being, rights, and satisfaction;
- (7) Ensuring that any participant and the participant's family or guardian receive a written list of their rights in an accessible format or language that is easy to understand;
- (8) Submission of incident reports pursuant to §46:10:07:12; and
- (9) Preparation of the participant's annual ISP and modifications as needed;
- (10) Serving as the employer of record and co-employer when an agency with choice model is used;
- (11) Ensuring that services provided are consistent with the participant's ISP and are detailed in the provider agreement with the division; and
- (12) Monitoring and documenting the effectiveness of the implementation of the ISP on a quarterly basis; and
- (13) Compliance of approved policies pursuant to §46:10:07:06.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

46:10:07:09 Criteria for designation as an independent contractor. An independent contractor providing participant directed personal care, respite care, companion care or supported employment under the provisions of this chapter must meet the following criteria:

- (1) Have a signed provider agreement with the department;
- (2) Have a signed provider agreement with the Department of Social Services;
- (3) Meet the applicable requirements for the service provided; and
- (4) Have policies approved by the division in the following areas:
 - (a) Participant directed personal care;
 - (b) Respite care; and
 - (c) Companion care;
 - (d) Supported employment; and
- (3) Have policies approved by the division in the following areas:
 - (a) Confidentiality;
 - (b) Drug-free workplace;
 - (c) Grievance;
 - (d) Emergency procedures and back up plan;
 - (e) Sexual harassment;
 - (f) Abuse, neglect, exploitation and incident reporting;

- (g) Safety;
- (h) Universal precautions;
- (i) Proper lifting techniques and body mechanics, back safety and risk factors for back injury;
- (j) Termination and notice requirements; and
- (k) Payment and billing.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

46:10:07:10. Qualifications of an independent contractor. The qualifications for an independent contractor include:

- (1) Must be at least 18 years of age;
- (2) Must pass a criminal background check;
- (3) Must be able to communicate effectively verbally and in writing;
- (4) Must be able to follow written or verbal instructions provided by the participant, guardian, advocate, or family member of the participant; and
- (5) Must have the abilities or skills necessary as determined by the participant to meet the participant's needs as outlined in the ISP.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

- 46:10:07:11. Responsibilities of an independent contractor:** The responsibilities of an independent contractor include the following:
- (1) Compliance with state and federal worker's compensation requirements;
 - (2) Compliance with division qualifications set forth in this chapter for providing services;
 - (3) Submission of reports and compliance with all record keeping required by the division;
 - (4) Submission of claims to the Department of Social Services for reimbursement;
 - (5) Maintenance, transfer and retention of records pursuant to this chapter including all information related to invoicing;
 - (6) Assurance of the health and safety of each participant receiving services according to this chapter;
 - (7) Demonstrate compliance with personal outcome measures to assess personal outcomes in the areas of choice, relationships, lifestyle, health and well-being, rights, and satisfaction;
 - (8) Ensuring participant and the participant's family or guardian receive a written list of their rights in an accessible format or language that is easy to understand;
 - (9) Serve as an employer of record and co-employer when an agency with choice model is used;
 - (10) Receive training from the participant or legal guardian, advocate or family member of the participant in performance of any service outlined in the ISP;

- (11) Submission of incident reports pursuant to §46:10:07:12; and
- (12) Compliance with approved policies pursuant to §46:10:07:09.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

46:10:07:12. Incident report – Submission to the division. The OHCDs or independent contractor shall give verbal notice or a facsimile of the incident to the division within 48 hours or the next working day, whichever occurs first, once the OHCDs or independent contractor becomes aware of the incident. The OHCDs or independent contractor shall submit a written incident report on a form provided by the division. The report shall be submitted to the division within seven calendar days after the verbal notice. A report shall be submitted in the following instances:

- (1) Deaths;
- (2) Life-threatening illness or injuries, whether hospitalization occurs or not;
- (3) Alleged instances of abuse, neglect or exploitation against or by participants;
- (4) Changes in health or behavior that may jeopardize continued services;
- (5) Illnesses or injuries that resulted from unsafe or unsanitary conditions; or
- (6) Any illegal activity that involves a participant.

The report must contain a description of the incident, specifying what happened, when it happened and where it happened. The report must be dated and signed by the individual making the report.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(4).

46:10:07:13. Participant selection of an OHCDS or independent contractor.

The participant has the right to choose either an OHCDS or an independent contractor for delivery of services.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26 (4).

46:10:07:14. Agency with choice model. An agency with choice model is a co-employment arrangement between an OHCDS or independent contractor and participant in which the OHCDS or independent contractor is the employer of record and the participant is the managing employer. The participant and the participant's family may participate in the recruitment, interviewing, selection, training and supervising of employees who will be providing the service. The OHCDS or independent contractor does the actual hiring. An agency with choice model is limited to the following waiver services:

- (1) Participant directed personal care;
- (2) Companion care;

- (3) Respite care; or
- (4) Supported employment.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

46:10:07:15. Eligibility. To be eligible for services under this chapter an individual must meet the eligibility criteria set forth in chapter 67:54:08.

It is the responsibility of the coordinator to gather information necessary to determine eligibility.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(3)(9).

46:10:07:16. Notification of eligibility. Notice of eligibility will be sent out according to §67:46:08:02.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(3)(4)(9).

Cross reference: Adequate notice to applicant, 67:46:08:02.

46:10:07:17. Notification to participant of providers, services, and rights.

The participant or the participant's parent or guardian shall be informed by the coordinator that services are available from the HCBS waiver. The participant or the participant's parent or guardian shall be provided with a list of OHCDs providers and independent contractors, informed of the appeal process and provided with contact information to request a fair hearing.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(3)(4)(9).

46:10:07:18. Waiting list. If a waiting list develops, the division shall assign a level of priority for entrants to the waiver. The first level is "priority status" which is defined as individuals who are at a significant risk. Significant risks include:

- (1) Individuals whose health, welfare or safety is in jeopardy;
- (2) Individuals at imminent risk of being institutionalized; or
- (3) Individuals who are institutionalized.

All other individuals are placed in the second level, which is "applicant status". Individuals in "priority status" will be placed at the top of the waiting list and receive services on a first come first serve basis. Individuals in "applicant status" will receive services on a first come first serve basis but after those in "priority status".

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(3)(4)(9).

46:10:07:19. Description of services. All family support services shall be participant-directed to the extent the participant and the participant's family or guardian choose and can include budget and employer authority. Budget and employer authority means the participant and the participant's family can control their own budget for services and can recommend for hire individuals or entities to the OHCDs or independent contractor.

Family support services shall be specifically tailored to the competencies, interests, preferences, and needs of the participant and the participant's family or guardian and respectful of the cultural and ethnic beliefs, traditions, personal values and lifestyle of the family.

The participant must receive at least one of the following waiver services each month:

(1) Family support coordination services to include:

- (a) Coordination, facilitation and monitoring services;
- (b) Assessment and re-assessing service needs;
- (c) Assisting with recruiting, screening, hiring and training providers;
- (d) Identifying, providing information about, and assisting families to access community resources;
- (e) Facilitating development, review, and modification of ISPs;

- (f) Providing advocacy education and skill development to the participant or the participant's parent or guardian;
 - (g) Initiating, collaborating and facilitating the development of a transition plan;
 - (h) Reviewing the actual expenditures and revenues in the ISP budget and assisting the participant and the participant's family or guardian, and providers in managing the authorized funds; and
 - (i) Monitoring participant satisfaction.
- (2) Participant directed personal care services to include:
- (a) Basic living skills such as eating, drinking, toileting, personal hygiene and dressing;
 - (b) Improving and maintaining mobility and physical functioning;
 - (c) Maintaining health and personal safety;
 - (d) Carrying out household chores and preparation of snacks and meals;
 - (e) Communication, including use of assistive technology;
 - (f) Learning to make choices, to show preferences, and to have opportunities for satisfying those interests;
 - (g) Accessing and using transportation;
 - (h) Participation in community experiences and activities;
 - (i) Pursuing interests and enhancing competencies in leisure activities; and
 - (j) Addressing behavioral challenges.
- (3) Respite care services shall include short term assistance, in or out of a participant's home for the temporary relief and support of the family.

(4) Supported employment services to include:

- (a) Improving or maintaining skills in employment activities;
- (b) Enhancing social and personal development or well being within the context of vocational goals; and
- (c) Providing consultation services, as needed by each participant;.

(5) Companion care services to include:

- (a) Supervised integrated socialization, role modeling and independent living skill development;
- (b) Support with meal preparation, laundry, and shopping; and
- (c) Assistance and supervision with acquiring, retaining and improving self-help, socialization and adaptive skills.

(6) Environmental accessibility adaptation services include adaptations to the home environment that are a direct benefit to the participant to ensure access, health and safety.

Adaptations that add to the total square footage of the home are excluded from this benefit. For all purchases over \$1000, the participant must intend to reside in the home for greater than two years. Adaptations to a property in which the participant will reside for less than two years are subject to a prior authorization process administered by the division.

(7) Nutritional supplements.

(8) Specialized medical adaptive equipment and supplies include devices, controls or appliances that enable participants to increase their abilities to perform activities of daily living or perceive, control or communicate with the environment in which they live.

(9) Vehicle modification includes adaptations to vehicles to ensure the participant's safety and access to the community.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(3).

46:10:07:20. Individualized service plans. The coordinator shall make initial contact with the participant within 14 calendar days of being selected by the participant. The ISP must be completed within 30 calendar days of initial contact between the participant and the coordinator. The ISP shall include:

- (1) Measurable goals for the completion of outcomes;
- (2) Any services or supports to be provided to the participant;
- (3) Start dates to address goals;
- (4) Implementation strategies to address goals;
- (5) Individuals responsible for providing the supports, implementation and monitoring of the ISP;
- (6) An emergency back-up plan;
- (7) Documentation indicating that the participant or the participant's parent or guardian has been involved in, informed of, and agrees with the plan; and
- (8) A description of the process for appeal pursuant to §46:10:07:37.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(3)(4)(9).

46:10:07:21. Budget utilization information to support participant directed services. A budget update provided by the coordinator shall be included as an attachment to the ISP.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(2)(9).

46:10:07:22. Annual ISP meeting. The coordinator shall convene a meeting of the participant and the participant's support team to review the ISP at least annually or more often as needed and modify as appropriate.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(3)(4)(9).

46:10:07:23. ISP review and modification. It is the responsibility of the coordinator to monitor and discuss the implementation of the ISP quarterly with the participant and the participant's family or guardian. The participant or any member of the ISP team may request a review or modification of the ISP at any time.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(3)(4)(9).

46:10:07:24. Participant records. All entries in participant records shall be dated and signed and shall include information which is accurate, complete, timely, and relevant to the participant's needs for services or supports.

A copy of the participant records shall be in a format accessible to the participant. If abbreviations and symbols or jargon are used, a key shall be provided.

The participant record shall be held in a location accessible to the division and OHCDs staff and shall include:

- (1) The participant's full name;
- (2) The participant's social security number;
- (3) The date of HCBS eligibility;
- (4) The address of the participant at the time of entry into division service system and current address and phone number;
- (5) A summary of health insurance, financial support and other entitlements;
- (6) Any identification of family, guardian, conservator, and other interested persons, including current addresses and telephone numbers;
- (7) The status of legal capacity;

(8) All providers of services or supports including independent contractors, OHCDs subcontractors, and employees employed through the agency with choice model, during the past two years;

(9) Any employment history, including list of employers, dates of employment, and position(s) held;

(10) The current assessment reports;

(11) Any unusual incident reports;

(12) The identity of the responsible party for the management of participant funds;

(13) The quarterly progress notes which shall include observation of the participant's progress toward each goal, outcome and objective and observations of any events pertinent to the participant's growth and development, including but not limited to behavioral incidents and significant activities and events; and

(14) Current ISP.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(2).

46:10:07:25. Confidentiality of participant records. Each OHCDs or independent contractor shall have a policy regarding the confidentiality of participant information to ensure the records, paper or electronic copy, are protected against loss,

tampering, or unauthorized disclosure of information in accordance with 45 C.F.R., Part 160 and 164 (April 17, 2003) and the provisions of this chapter.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(2)(4)(9).

46:10:07:26. Transfer of participant records. If a participant transfers from one OHCDs or independent contractor to another OHCDs or independent contractor, the transferring entity shall deliver a copy of the participant's record to the new entity upon obtaining consent by the participant or the participant's parent or guardian. A copy shall be made available to the participant or if appropriate, the participant's parent or guardian.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(2)(4)(9).

46:10:07:27. Retention of participant records. The OHCDs or independent contractor must maintain or supervise the maintenance of records for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, statistical, fiscal, other records, and information necessary for reporting and accountability as required by the division.

The OHCDs or independent contractor shall retain such records for six years following termination of the agreement. If such records are under pending audit, the OHCDs or independent contractor agrees to hold such records for a longer period upon notification from the state.

The state, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this rule.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(2)(4)(9).

46:10:07:28. Review of an OHCDs. The division shall conduct an announced review of an OHCDs at least biennially, including all or part of any services, finances, or operations of the OHCDs, whether operated directly by the OHCDs or through contracts with individuals or organizations. This review shall include:

- (1) A statistically valid sample of ISP's;
- (2) A satisfaction interview with participants; and
- (3) A billing review.

The billing review will be conducted by a department auditor through a random sample of claims to ensure and validate the accuracy of recording keeping, supporting documentation and claim submission. The department may conduct a review at any time upon receipt of a complaint.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

46:10:07:29. Review of an independent contractor. The division shall conduct an annual review through a random sample of at least ten percent of independent contractors including all or part of any services, finances, or operations of the independent contractor. The division may also conduct a review upon receipt of any complaint filed with the division regarding the provision of services by an independent contractor.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

46:10:07:30. Statement of deficiencies and plan of correction. If an OHCDs or independent contractor with a family support provider agreement fails to be in compliance, a statement of deficiencies noting areas of noncompliance shall be issued by the division within 30 calendar days following the survey. The OHCDs or independent contractor must submit a plan of correction to the division within 30 days of receipt of the statement of deficiencies.

The plan of correction shall detail the action to be taken to correct the deficiencies and the date by which the corrections will be made. The plan of correction is subject to acceptance or rejection in whole or in part by the division. The division shall notify the OHCDs or independent contractor within 30 days of receipt of the plan of correction of its decision regarding approval of the plan of correction and status of the provider agreement.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

46:10:07:31. Revocation of the provider agreement. The division may revoke a provider agreement if the OHCDs or independent contractor fails to meet the requirements of this chapter.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

46:10:07:32. Rights of participants and parents or guardians. All participants or the participant's parent or guardian have the right to:

- (1) Be free from aversive procedures, devices and treatments;
- (2) Have privacy, dignity, confidentiality and humane care;
- (3) Be able to communicate in private;

(4) Be able to communicate in the participant's primary language or primary mode of communication;

(5) Be free from retaliation for making a complaint, voicing a grievance, recommending changes in policies or exercising a legal right;

(6) Be able to maintain contact with family and friends, unless contact has been restricted by court order;

(7) Be able to refuse or terminate services, except where services are required by court order; and

(8) Have access to, read and challenge any information contained in any records about the participant that are maintained by the division or any agency or program funded by the division and to file a written statement in the record regarding any portion of the record with which the participant disagrees.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(4)(9).

46:10:07:33. Highly restrictive procedures. Each independent contractor providing service coordination must have policies addressing the use of highly restrictive procedures. Such procedures include physical restraint, medications to manage behavior, time-out rooms, aversive conditioning, or other techniques with similar degrees of restriction or intrusion. The independent contractor providing service coordination must have policies that include the following:

(1) The service team process used to determine the most appropriate restrictive procedure to use for the participant's needs and restoration plan;

(2) Documentation of the service team's analysis of positive approaches and the less restrictive procedures that were used before implementation of a highly restrictive procedure;

(3) Procedures for review and approval of the use of highly restrictive procedures by the human rights committee prior to implementation and at least every six months thereafter. The review date may not exceed six months from the date of approval;

(4) A behavior intervention plan specifying the circumstances under which time-out may be used, the maximum time it may be used, and the procedures to be followed. Behavior intervention plans must be approved by the human rights committee prior to implementation and reviewed at least every six months;

(5) Procedures for review and approval of the use of highly restrictive procedures by the participant's parent if the participant is under 18 years of age or the legal guardian; and

(6) Procedures to document, in the participant's plan, timelines for notifying the participant's parent if the participant is under 18 years of age or the legal guardian when highly restrictive procedures are implemented.

Source:

General Authority: SDCL 27B-2-26(3).

Law Implemented: SDCL 27B-2-26.

46:10:07:34. Human rights committee -- Composition. Each independent contractor providing service coordination must have a human rights committee or participate in a multiagency committee which ensures that each participant's rights are supported. The committee's membership is appointed and selected by the board of directors and its composition must meet the following criteria:

- (1) Committee membership must include participants or their representatives;
- (2) At least one-third of the committee's members may not be affiliated with the independent contractor or the board of directors; and
- (3) At least one member of the committee has training or experience with issues and decisions regarding human rights.

Source:

General Authority: SDCL 27B-2-26(3).

Law Implemented: SDCL 27B-2-26.

46:10:07:35. Human rights committee -- Procedures. The human rights committee must use the following procedures:

- (1) Review and approve or disapprove all behavior intervention plans which use any of the highly restrictive procedures listed in § 46:10:07:33. The review must ensure

the opportunity for the informed consent of and participation by the participant and the participant's guardian, family member, or advocate in the development of highly restrictive interventions;

(2) If such plans continue to be implemented, review and approve or disapprove them at least every six months;

(3) Review each participant's restrictions of rights and restoration plan;

(4) Review and approve the independent contractor's policies, procedures, and practices in limiting rights of participants; and

(5) Be provided with training in individual rights, disability awareness, and the independent contractor's philosophy and mission.

Source:

General Authority: SDCL 27B-2-26(3).

Law Implemented: SDCL 27B-2-26.

46:10:07:36. Rights restriction – Due process. The rights of the participant may only be restricted to protect the participant from endangering self or others or to provide specific services or supports as provided in SDCL 27B-8-52. The rights restrictions shall promote the least restrictive alternative appropriate to meet the needs of the participant. Prior to restricting a participant's rights, the OHCDs or independent contractor shall require the participant, or the participant's parent or guardian, and the participant's ISP team to review and approve each restriction at least annually.

Restoration plans are developed and implemented when the need for restricting a person's right is identified. The participant and his or her team develop a plan which includes how the right will be restored in part or in whole. The plan is reviewed at least annually by the participant or the participant's parent or guardian and by the Human Rights Committee. Restoration plans must describe the right which will be restored and they must be outcome based, attainable, measurable, and time limited.

If the participant displays behavior that endangers self or others and requires an emergency rights restriction, the OHCDS or independent contractor shall notify the parent if the participant is a minor or the legal guardian within 24 hours of implementation of the restriction.

Source:

General Authority: SDCL 27B-2-26.

Law Implemented: SDCL 27B-2-26(4)(9), 27B-8-52.

46:10:07:37. Right of appeal. A participant or a participant's parent or guardian may appeal the following:

- (1) The participant's eligibility for supports and services; or
- (2) Termination or reduction of services.

A participant or a participant's parent or guardian dissatisfied with any of the areas listed above may request a fair hearing pursuant to SDCL chapter 1-26 by notifying the department in writing within 30 days of receipt of the division's decision.

Nothing in this section may be construed as indicating that the department will pay for legal fees for representing the parent, legal guardian, provider, or participant at a fair hearing pursuant to this section.

Source:

General Authority: SDCL 27B-2-25, 27B-2-26.

Law Implemented: SDCL 27B-2-25, 27B-2-26(4)(9).

46:10:07:38. Time and place of hearing -- Time extension. A fair hearing, pursuant to SDCL chapter 1-26, by an impartial hearing officer shall be held within 90 days after receipt for a request by the participant, parent if the participant is under the age of 18, or the participant's guardian. The impartial hearing officer shall set a time and place for the hearing to be held at the earliest reasonable time. The hearing examiner may continue the hearing at the request of any of the parties involved. A request for a continuance must be made at least 10 days prior to the date of hearing.

Source:

General Authority: SDCL 27B-2-25, 27B-2-26.

Law Implemented: SDCL 27B-2-25, 27B-2-26(4)(9).